

## CHAPTER 2 MINORITY BUSINESSES

### 2.1 RELATED STATUTORY AUTHORITY

- A. SC Law Section 11-35-5210 sets forth the General Assembly's intention to assist minority businesses.
- B. SC Law Section 11-35-5240 requires each agency to develop an MBE Utilization Plan to emphasize the use of minority businesses and to submit quarterly and annual reports on the plan and its implementation.
- C. SC Law Section 11-35-5250 permits the Chief Procurement Officer to make special provisions for progress payments, letters of credit and letters of contract award to assist minority businesses in obtaining appropriate credit and otherwise carry out the terms of a state contract.
- D. SC Law Section 11-35-5270 establishes the Small and Minority Business Assistance Office (SMBAO) to identify and assist responsive minority businesses.
- E. SC Regulation 19-445.2160 requires each agency to maintain records and submit reports to the SMBAO and the Board demonstrating implementation of the MBE Utilization Plan.

### 2.2 RELATED OSE FORMS

The following OSE standard forms are referred to in this Chapter. Reproducible copies of these forms may be found in the Appendix indicated.

- A. Form SE-210, *Invitation for Professional Services*, which may be found in Appendix A.
- B. Form SE-310, *Invitation for Construction Bids*, which may be found in Appendix B.
- C. Form SE-311, *Request for Minor Construction Quotes*, which may be found in Appendix C.

### 2.3 POLICY

- A. The South Carolina General Assembly declares that business firms owned and operated by minority persons have been historically restricted from full participation in our free enterprise system to a degree disproportionate to other businesses. The General Assembly believes that it is in the State's best interest to assist minority-owned businesses to develop fully as a part of the State's policies and programs which are designed to promote balanced economic and community growth throughout the State.
- B. The General Assembly, therefore, wishes to ensure that those businesses owned and operated by minorities are afforded the opportunity to fully participate in the overall procurement process of the State. The General Assembly, therefore, takes this leadership role in setting procedures that will result in awarding contracts and subcontracts to minority business firms in order to enhance minority capital ownership, overall state economic development and reduce dependency on the part of minorities.

### 2.4 DEFINITIONS

- A. MINORITY PERSON: A United States citizen who is economically and socially disadvantaged.
- B. SOCIALLY DISADVANTAGED: Those individuals who have been subject to racial or ethnic prejudice or cultural bias because of their identification as members of a certain group, without regard to their individual qualities. Such groups include, but are not limited to: Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts and Native Hawaiians), Asian Pacific Americans, Women and other minorities to be designated by the Board or designated agency.
- C. ECONOMICALLY DISADVANTAGED: Those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

**D. SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS:** Any small independent business concern which:

1. Is at least fifty-one (51) percent owned by one or more citizens of the United States who are determined to be socially and economically disadvantaged and who also exercise control over the business.
2. In the case of a corporation, at a minimum, fifty-one (51) percent of all classes of voting stock of such corporation must be owned by an individual or individuals determined to be socially and economically disadvantaged.
3. In the case of a partnership, at a minimum, fifty-one (51) percent of the partnership interest must be owned by an individual or individuals determined to be socially and economically disadvantaged and who also exercise control over the business.

## **2.5 MINORITY BUSINESS ENTERPRISE (MBE) UTILIZATION PLAN**

**A.** The construction services portion of the MBE plan shall include the following:

1. A policy statement expressing a commitment by the agency to use MBE's in all aspects of procurement.
2. The name of the person employed by the agency at the Directorate staff level appointed to be the MBE Liaison Officer.
3. A description of the duties of the MBE Liaison Officer, which should include the responsibility to:
  - (a) Develop, manage and implement the MBE plan on a day-to-day basis;
  - (b) Outline procedures to be used when it is determined feasible to divide larger projects into smaller tasks to allow MBE participation;
  - (c) Develop instructions to prime contractors requiring them to address the use of certified MBE subcontractors;
  - (d) Establish and maintain a directory of certified MBE's who wish to do business with the State;
  - (e) Disseminate information on available business opportunities to provide MBE's equal opportunity to bid on services, supplies, and construction to be procured by the agency;
  - (f) Maintain reference files of federal and state organizations that provide assistance to minority business organizations and make files available to MBE's;
  - (g) Establish and maintain records on the number of bid invitations and RFP's sent to and directed toward certified MBE's, answers received, and contracts awarded when applicable to the agency's dollar procurement limit; and
  - (h) Maintain records and submit progress reports to the SMBAO and the Board.

**B.** In the development of MBE utilization plans, agencies shall ascertain the total controllable procurement dollars budgeted for that particular fiscal year. Controllable procurement dollars include, but are not limited to, those anticipated expenditures for services, supplies, equipment or construction which are:

- (1) Not currently under contract for the present fiscal year; or
- (2) Not covered by mandatory term contract; or
- (3) Not defined as sole source acquisitions; or
- (4) Not obligated to be awarded to the lowest responsive and responsible source; or
- (5) Not obligated for repayment of time-pay, lease-purchased equipment or real property; or
- (6) Not required by statute to be expended with a governmental body.

**C.** Once determined, the agency shall establish realistic goals, including a reasonable percentage, for procurements directed toward certified MBE's.

## 2.6 CERTIFICATION OF MBE's

- A. When requested, a business determined to be a socially and economically disadvantaged business as defined in Paragraph 2.3 shall be certified as an MBE by the SMBAO. Businesses shall also be certified for a maximum dollar limit for procurement contracts.
- B. Contact SMBAO at the following address for the application procedure:
  - Governor's Office of Small and Minority Business Assistance      Shirley Mack, Director
  - 1205 Pendleton Street, Suite 418      Phone: (803) 734-0657
  - Columbia, SC 29201      Fax: (803) 734-0548
- C. The SMBAO maintains a list of certified MBE's providing construction and construction related professional services. The list is available to all agencies.

## 2.7 CONTRACTING WITH CERTIFIED MBE's

- A. Contracts for construction related professional services with fees \$25,000 or less may be directly negotiated with a certified MBE. The agency shall procure all professional services in accordance with Chapter 4.
- B. An agency may direct a contract for construction related professional services with fees exceeding \$25,000 towards certified MBE's. The agency shall include the following statement on the Form SE-210: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the MBE goal of the agency. However, this does not prevent other firms from submitting resumes for consideration." The agency shall procure all professional services in accordance with Chapter 4.
- C. An agency may direct an entire construction contract towards certified MBE's. The agency shall procure the contract in accordance with Chapter 8 for small purchases or Chapter 6 for competitive sealed bidding. If the procurement requires advertisement, then the agency shall include the following statement on the Form SE-310 or Form SE-311: "This is a designated contract directed towards certified South Carolina based minority firms to satisfy the MBE goal of the agency. However, this does not prevent other firms from bidding on this project."
- D. An agency may direct all bidders to address the use of certified MBE's as subcontractors. The agency should provide specific instructions in the bid documents and the advertisement on how to comply with the requirement. The agency may declare a bid non-responsive for failure to address the use of MBE subcontractors as instructed.

## 2.8 BONDING OF SMALL AND MINORITY BUSINESS ENTERPRISES

- A. The State requires bid, payment and performance bonds on all construction projects valued at \$50,000 or more, and encourages, but does not require bonds on projects below this threshold, provided the Agency has protected the interests of the State.
- B. SBA Surety Bond Guarantee Program.

Effective December 21, 2000, the Small Business Administration's Surety Bond Guarantee Program now provides guarantees on bonds up to a maximum of \$2 million, up from \$1.25 million, for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. The SBA program guarantees from 70 percent to 90 percent of losses incurred by surety companies, in the event of a contractor's default, on contracts not exceeding \$2 million. More information on this program is available from the Web site for the SBA's Office of Surety Guarantee (<http://www.sbaonline.sba.gov/osg/>) or from any SBA office.

## 2.9 INCOME TAX CREDIT

- A. A person or firm with a state contract where portions of the work are subcontracted to one or more certified MBE's is eligible for an income tax credit. The credit is equal to 4 percent of the total payment made to MBE subcontractors for work performed on the state contract up to a maximum of \$25,000 annually.

- B. A person or firm shall be eligible to claim the income tax credit for a period of five years from the date the income tax credit is first claimed.
- C. A person or firm claiming the income tax credit shall provide information as required by the Department of Revenue when filing the state income tax return claiming the credit.

## **2.10 PROGRESS PAYMENTS FOR CONSTRUCTION RELATED SERVICES**

- A. The State Engineer may make special provision for progress payments to a certified MBE as deemed reasonable.
- B. If requested by the MBE and subject to State Engineer approval, progress payments may be made on a monthly basis or upon completion of a stated percentage of the contract such as 25%, 50%, 75% and 100% of the contract. Progress payments may be made at more frequent intervals if deemed in the best interest of the State.
- C. The MBE shall furnish a contract cost breakdown with the progress payment request in accordance with the contract. When a purchase order is the contract, the requirement for a breakdown is at the discretion of the agency.
- D. The agency shall retain five percent of the contract amount as required by law until contract completion. However, if the MBE requests a release of the retainage in a progress payment and the agency determines that satisfactory progress is being achieved, the agency may authorize payment of the retainage in addition to the progress payment.
- E. All material and work covered by progress payments shall become the property of the State. This provision shall not relieve the contractor from his responsibility for all materials and work or the restoration of any damage to work until the contract is complete and all terms of the contract fulfilled.

## **2.11 LETTERS OF CREDIT AND LETTERS OF CONTRACT AWARD**

- A. If requested by a MBE after receiving an award for a state contract, the State Engineer or the agency procurement officer shall furnish a letter stating the dollar value, duration, payment schedule, and other information concerning the contract to the MBE to negotiate lines of credit with a lending institution.
- B. If requested by a MBE after receiving an award for a state contract, the State Engineer or the agency procurement officer shall furnish a letter stating the dollar value, duration, payment schedule, and other information concerning the contract to the MBE to negotiate lines of credit with a lending institution.